

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,
individually and on behalf of NORFOLK
& PORTSMOUTH BELT LINE
RAILROAD COMPANY,

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-LRL

NORFOLK SOUTHERN RAILWAY
COMPANY, *et al.*,

Defendants.

_____ /

DECLARATION OF ROBERT W. MCFARLAND

I, Robert W. McFarland, declare and state as follows:

1. I have personal knowledge of and, if called to testify, could and would testify to the facts stated in this Declaration.

2. I am the trial attorney and partner jointly responsible for McGuireWoods LLP's representation of Plaintiff CSX Transportation, Inc. ("CSXT") in the above-captioned matter, and I submit this Declaration in support of CSXT's Motion for Attorneys' Fees, which seeks to recover CSXT's reasonable fees and expenses it incurred in pursuing its Motion to Reopen and Compel Depositions (ECF No. 203), which the Court granted on September 4, 2020 (ECF No. 237).

3. From September 2018 to present, McGuireWoods has represented CSXT in connection with the above-captioned matter. I have been involved in all aspects of our representation of CSXT in this case and have coordinated the efforts of McGuireWoods attorneys and staff over the course of the firm's work on this litigation.

4. CSXT is contemporaneously submitting the Declaration of Alan D. Albert, Esq., of O'Hagan Meyer, who is serving as an independent expert regarding the reasonableness of McGuireWoods' fees in this matter. I am submitting this Declaration to provide the Court with the relevant background and context for the attorneys' fees that CSXT is requesting – specifically, the rates charged by the McGuireWoods' attorneys and staff representing CSXT and the hours expended by McGuireWoods.

Rates of McGuireWoods' Attorneys and Staff

5. The rates charged by the McGuireWoods' attorneys and staff representing CSXT are commensurate with rates charged by other attorneys with comparable backgrounds, experiences, and expertise handling complex litigation matters before this Court. Befitting the challenging legal issues involved, the McGuireWoods' attorneys and staff assigned to this matter are well-qualified and highly experienced. In total, CSXT seeks reimbursement for the time expended by five (5) attorneys and one paralegal.

- Partner Robert McFarland has been a member of the Virginia Bar since 1984, and he has tried more than 130 cases to juries, with an equivalent number of non-jury trials. He is regularly named to Virginia Business's "Legal Elite" and has been included in *The Best Lawyers in America* continually since 2005. His practice focuses on business and civil litigation. He is a *magna cum laude* graduate of both the University of Virginia and the Georgetown University Law Center.
- Partner Benjamin L. Hatch previously served as a law clerk to Justice Antonin Scalia of the Supreme Court of the United States and Judge J. Michael Luttig of the U.S. Court of Appeals for the Fourth Circuit. His practice focuses on complex litigation in federal trial and appellate courts. He graduated *magna cum*

laude from the Harvard Law School and received his undergraduate degree, with distinction, from the University of Virginia.

- V. Kathleen Dougherty, Counsel to McGuireWoods, has been a member of the Virginia Bar since 2008, and has considerable experience in federal litigation, including trial and motions practice, with extensive experience before this Court. She was a law clerk to Judge Rebecca Beach Smith of the U.S. District Court for the Eastern District of Virginia, and served for ten years with the United States Department of Justice before joining McGuireWoods. Ms. Dougherty is a *magna cum laude* graduate of the College of William & Mary and received her law degree from the University of Virginia School of Law.
- Ashley Peterson, a senior associate, completed two federal clerkships prior to joining McGuireWoods—one with Chief Judge Edward E. Carnes of the U.S. Court of Appeals for the Eleventh Circuit, and one with then-Chief Judge Glen E. Conrad of the U.S. District Court for the Western District of Virginia. Since joining McGuireWoods, Ms. Peterson has litigated a number of cases in this Court and in other trial and appellate courts across the country. Ms. Peterson is a *summa cum laude* graduate of the University of Richmond School of Law, and received her undergraduate degree, with distinction, from the University of Virginia.
- Sean P. Walsh, a junior associate, concentrates on complex commercial litigation in federal and state courts. In his two years with McGuireWoods, Mr. Walsh has represented national clients in putative class actions, as well as in state and federal

litigation matters. Mr. Walsh received both his undergraduate and law degrees from the University of Florida.

- Krystal L. Gollogly is a litigation paralegal with over a decade of legal experience. Her comprehensive skillset and experience proved invaluable to many aspects of this Motion, particularly in coordinating the preparation and redaction of exhibits and preparing pleadings.

Hours Expended by McGuireWoods' Attorneys and Staff

6. Over a five-month period between June and October 2020, McGuireWoods attorneys performed six tasks related to CSXT's Motion for which CSXT is entitled to attorneys' fees: (1) conducting a focused review of some of NSR's late-produced documents, and depositions transcripts, to assess if additional or reopened depositions were warranted; (2) corresponding and negotiating with NSR counsel to try and resolve this issue without motions practice; (3) preparing the Motion, including research regarding propriety of CSXT's position, and associated exhibits and sealing paperwork; (4) considering NSR's opposition and preparing a reply in support of the Motion; (5) preparing for and arguing the Motion before the Court on September 4, 2020; and (6) preparing this Motion for Attorneys' Fees.¹

7. CSXT has carefully reviewed and voluntarily reduced the total attorney time spent on these tasks over this five-month period. CSXT endeavored to avoid any dispute over potentially duplicative work by multiple attorneys. When more than one CSXT attorney participated in a telephonic conference, for instance, only one attorney's time was included in the request. Moreover, CSXT has eliminated a portion of the attorney time related to the first task

¹ In this Motion, CSXT is not seeking to recover attorneys' fees expended in preparing its Motion for Attorneys' Fees, nor the costs incurred in retaining Mr. Albert, in contemplation of needing to prepare further pleadings in response to NSR's Opposition to this Motion.

(i.e. conducting a focused review of some of NSR' late-produced documents) because presumably some of that attorney time would have been incurred to review the documents in any event. CSXT has carefully analyzed the few instances of block billing in the CSXT invoices and counted only attorneys' time spent on issues related to seeking reopened or additional depositions, or to overcoming NSR's unfounded objections to the same. As a final check on the requested fees' reasonableness, we have also analyzed, and as we deemed advisable, reduced the rates of certain McGuireWoods attorneys by an average of 10%.

8. Attached to this Declaration as **Exhibit 1** are records itemizing the time expended by McGuireWoods and the corresponding fees billed to CSXT.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Norfolk, Virginia, on October 5th, 2020.



Robert W. McFarland